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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,648	07/17/2003	Vanessa Mary Joy McCallum	00-15-01 US	1036
23693	7590	12/19/2003	EXAMINER	
Varian Inc. Legal Department 3120 Hansen Way D-102 Palo Alto, CA 94304			GEISEL, KARA E	
			ART UNIT	PAPER NUMBER
			2877	

DATE MAILED: 12/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/621,648	Applicant(s) MCCALLUM ET AL.	
	Examiner Kara E Geisel	Art Unit 2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 July 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 and 13-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☒ Claim(s) 2-11 and 13-19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \*   c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                      | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                             | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>07/03</u> . | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Preliminary Amendment***

The preliminary amendment filed on July 17<sup>th</sup>, 2003, has been entered into this application.

### ***Priority***

An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification or in an application data sheet (37 CFR 1.78(a)(2) and (a)(5)).

Applicant is reminded that in order for a patent issuing on the instant application to obtain the benefit of priority based on priority papers filed in parent Application No. 09/831,244 under 35 U.S.C. 119(a)-(d) or (f), a claim for such foreign priority must be made in this application. In making such claim, applicant may simply identify the application containing the priority papers.

### ***Information Disclosure Statement***

The information disclosure statement filed on July 17<sup>th</sup>, 2003 has been fully considered by the examiner.

### ***Drawings***

Figures 1, 5, 7A and 7B are objected to as failing to comply with 37 CFR 1.84(o) because they fail to use legends necessary for understanding of the drawings. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claim 13 is objected to because of the following informalities: dependence on a claim (claim 12) not represented in the amendment.

Was claim 12 inadvertently omitted from the amendment? Clarification or correction is required.

### ***Claim Rejections - 35 USC § 103***

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kley (US Pub 2002/0117611) in view of Quake (USPN 6,002,471), and in further view of Mattson et al. (USPN 5,406,090).

In regards to claim 1, Kley discloses an instrument (fig. 5), and an exchangeable accessory therefor (fig. 5, 122-1) including an operable mechanism (fig. 6) for attaching the exchangeable accessory to the instrument, the mechanism including a rotatable camming means (fig. 6, 160) associated with the instrument, a male member associate with the accessory (fig. 5, 122-1 end of probe), the male member having a camming surface which is engageable by the camming means, wherein the accessory is positionable on the instrument in a predetermined location and the camming means is rotatable to engage

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the camming surface of the male member and thereby lock the accessory on the instrument in the predetermined location (page 7, ¶s 90-91). While the instrument is not disclosed as a spectrometry instrument, it is well known in the art that an optical scanning probes such as those disclosed by Kley (page 4, ¶61 and page 16 ¶s 164-167) can be attached to and used with a spectrometry instrument (see Quake column 2, lines 5-63). Since the invention, as discussed, is directed to attaching the optical scanning probes to the instrument, it would be obvious to one of ordinary skill in the art to use this same type of mechanism for attaching the probe to a spectrometry instrument. Kley does not disclose that the mechanism for attaching is manual.

While Kley does disclose that the mechanism for attaching is automatic (fig. 5, 114 and page 7, ¶90-91), it is well known in the art to have a mechanism also be able to be controlled manually, in case the automatic control is not functioning properly. For example, Mattson discloses an adapting a control mechanism, used for precisely aligning a part in a spectrometer, so that the part can be aligned manually (columns 7-8, lines 51-68 and 1-2 respectively). This is done so that the part can be aligned even if the automatic control is not operating properly. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have a means to manually operate the mechanism for attaching the accessory in Kley's device in case that the automatic mechanism was not working properly.

*Allowable Subject Matter*

Claims 2-11, and 14-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

If claim 12 was inadvertently omitted in the amendment, as set forth in this Office action, claim 12 as set forth in the substitute specification (page 22), and claim 13 as set forth in the preliminary amendment would be objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims.

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The following is a statement of reasons for the indication of allowable subject matter:

As to claim 2, the prior art of record, taken alone or in combination, fails to disclose or render obvious a spectrometry instrument and an exchangeable accessory therefor wherein the camming means includes a body having a recess formed therein, the recess having a curved camming surface which interacts with the camming surface of the male member, in combination with the rest of the limitations of claim 2.

As to claim 4, the prior art of record, taken alone or in combination, fails to disclose or render obvious a spectrometry instrument and an exchangeable accessory therefor wherein the male member is biased in a direction towards the instrument or accessory with which it is associated, whereby engagement of the camming means with the camming surface of the male member moves the male member against the bias, in combination with the rest of the limitations of claim 4.

As to claim 5, the prior art of record, taken alone or in combination, fails to disclose or render obvious a spectrometry instrument and an exchangeable accessory therefor wherein the camming means and male member are substantially centrally located on facing surfaces of the instrument and the accessory, in combination with the rest of the limitations of claim 5.

As to claim 6, the prior art of record, taken alone or in combination, fails to disclose or render obvious a spectrometry instrument and an exchangeable accessory therefor wherein facing surfaces of the instrument and the accessory include projections and complementary recesses for establishing a predetermined location, in combination with the rest of the limitations of claim 6.

As to claim 8, the prior art of record, taken alone or in combination, fails to disclose or render obvious a spectrometry instrument and an exchangeable accessory therefor wherein the camming means is associated with the accessory and the male member is associated with the instrument, in combination with the rest of the limitations of claim 8.

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As to claim 9, the prior art of record, taken alone or in combination, fails to disclose or render obvious a spectrometry instrument and an exchangeable accessory therefor including an electrical circuit for identifying any one of a plurality of exchangeable accessories that are connectable to the instrument, the circuit including a voltage source and means for generating an identifying voltage therefrom, wherein each accessory includes at least one circuit element such that connection of an accessory to the instrument alters the identifying voltage to a value that is uniquely dependent upon the accessory that is connected to the instrument, in combination with the rest of the limitations of claim 9.

*Additional Prior Art*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art made of record is Zupanick et al. (USPN 4,865,424), Tsukamoto (USPN 4,994,829), and van der Weide (USPN 5,936,237).

Zupanick discloses a spectrometry instrument and an exchangeable accessory therefor, including a manually operable mechanism for adjusting the exchangeable accessory with respect to the instrument, the mechanism including a manually rotatable camming means associated with the instrument, a male member associated with the accessory, the male member having a camming surface which is engageable by the camming means wherein the accessory is positionable with respect to the instrument in a predetermined location and the camming means is manually rotatable to engage the camming surface of the male member.

Tsukamoto discloses an instrument and an exchangeable accessory therefor including a manually operable mechanism for attaching the accessory to the instrument, the mechanism including a manually rotatable camming means associated with the instrument wherein the accessory is positionable with respect to the instrument in a predetermined location.

Van der Weide discloses an optical scanning probe for use with a spectrometry instrument.

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*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kara E Geisel whose telephone number is 703 305 7182. The examiner can normally be reached on Monday through Friday, 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank Font can be reached on 703 308 4881. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872 9306 for regular communications and 703 872 9306 for After Final communications. For inquiries of a general nature, the Customer Service fax number is 703 872 9317.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1782.



F.L. Evans  
Primary Examiner  
Art Unit 2877



KEG  
December 11, 2003